

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ALAN D. BRIGNER,**

**Petitioner,**

**v.**

**WARDEN, CHILLICOTHE  
CORRECTIONAL INSTITUTION,**

**Respondent.**

**CASE NO. 2:17-CV-1045**

**JUDGE JAMES L. GRAHAM**

**Magistrate Judge Kimberly A. Jolson**

**REPORT AND RECOMMENDATION**

On December 1, 2017, Petitioner, a state prisoner, submitted a petition for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) On December 5, 2017, this Court issued an Order noting that Petitioner had failed to submit the full filing fee or an application seeking to proceed *in forma pauperis* under 28 U.S.C. § 1915(a). (ECF No. 2.) Consequently, this Court ordered Petitioner to either pay the \$5.00 filing fee or file a proper motion to proceed *in forma pauperis* within thirty (30) days of the date of that Order. (*Id.*) The Court additionally indicated that “[f]ailure to do so [would] result in recommended dismissal of this action for want of prosecution.” (*Id.*)

More than 30 days have passed, and Petitioner has not paid the filing fees or moved to proceed *in forma pauperis*. Accordingly, it is **RECOMMENDED** that this action be **DISMISSED without prejudice** for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Gravitt v. Tyszkiewicz*, 14 F. App’x 348, 349 (6th Cir. 2001) (finding that district court did not abuse its discretion when it dismissed habeas petition for want of prosecution under Rule 41(b); petitioner failed to pay filing fees or seek pauper status after being expressly warned that failure to do so might result in dismissal.)

### **Procedure on Objections**

If any party objects to this *Report and Recommendation*, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. 636(B)(1).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

**IT IS SO ORDERED.**

Date: January 16, 2018

/s/ Kimberly A. Jolson  
KIMBERLY A. JOLSON  
UNITED STATES MAGISTRATE JUDGE